

Complainant (Bangor)

v.

Respondents (Bangor)

### **I. Complainant's Charge:**

Complainant alleges that Respondents discriminated against her on the basis of her son's disability by refusing her request for a reasonable modification of a fenced-in dog run in her yard for her son's service animal. Complainant also alleges that by imposing unfair restrictions on service animals in general, Respondents effectively denied her son the full enjoyment of his service dog, and therefore denied him the reasonable accommodation.

### **II. Respondent's Answer:**

Respondents deny discrimination and allege that Complainant put a dog run up without asking or requesting it as a reasonable modification for her son, and that she was told to take it down because an unsupervised dog could injure other tenants or guests and create a liability for the company.

### **III. Jurisdictional Data:**

- 1) Date of alleged discrimination: On or around January 15, 2009.
- 1) Date complaint filed with the Maine Human Rights Commission: January 28, 2009.<sup>1</sup>
- 2) Respondent owns 32 rental units and Respondent2 manages these units. Respondent works for Respondent 2 as Manager of the property. All are subject to the Maine Human Rights Act, the federal Fair Housing Act, as well as state and federal housing regulations.
- 3) Complainants are represented by Patricia Ender, Esq. Respondents are represented by Edward Gould, Esq.

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<sup>1</sup> The complaint is dual-filed with the U.S. Department of Housing and Urban Development, HUD No. 01-09-0179-8, Section 504 No. 01-09-0041-4.

- 4) Investigative methods used: A thorough review of the written materials submitted by the parties, phone interview with Complainant, witness interviews, requests for further information.

**IV. Development of Facts:**

- 1) The parties and issues in this case are as follows:

- a) Complainant's son (hereinafter "Minor") has many disabilities, both physical and mental.
- b) Complainant has rented an apartment from Respondent since 2000. Due to Minor's disabilities he requested a dog as a service animal which was granted.
- c) Respondent is Manager of the apartment complex in which Complainants reside.
- d) JM works for Respondents in the management office.
- e) Dr. P is Minor's Pediatrician who has treated him for approximately the past 2 years.
- f) Respondents claim that Complainant never requested the dog run as a reasonable modification and that it was not a medical necessity for her son. Complainant alleges that she did request it as a modification but it was denied and that too many restrictions are placed upon service animals in general which denies her son the use of his reasonable accommodation.

- 2) Undisputed facts are as follows:

- a) Respondents administered a new Pet / Assistive Animal Amendment (copy attached) which provides, in part, the following:
  - Every tenant with a pet or service animal must provide Management with a signed agreement from a third party to accept total responsibility for the care of the animal at such time as the tenant becomes temporarily or permanently unable to care adequately for the animal. The decision of whether or not the tenant is able to care adequately for the animal shall be made solely at the discretion of the Management."
  - Absolutely no pets will be allowed on a visiting or temporary basis, whether overnight or daily.
- b) On June 23, 2009 Complainant was served with a 30-day Notice To Quit which stated that she was being evicted for the following reasons:
  - Dog running loose on the property multiple times

- Not signing the Amendment to the Lease for Pet/Assistive animals rules and Regulations
- Defacing the property in back yard
- Fire pit on property
- Unauthorized fencing in back yard

3) Complainant provided the following:

- a) She requested to put up a fenced-in dog run in her back yard at her own expense as a reasonable modification for her son who has a service animal for his disabilities (the service dog is a German Shepherd / Blue Tick mix). Although she never used the words 'reasonable modification' and did not fill out any paperwork for the request, she made several verbal requests for it and explained to both JM and Respondent that she could not leave her son alone and unsupervised to take the dog out to go to the bathroom because of his disabilities. She also explained that it is very difficult to have Minor accompany her with the dog outside if the weather is bad because of his autism; it is hard to get him to cooperate. She never told Respondent that it was for her own convenience. Respondent told her she could not have the fence due to "insurance reasons." JM told her that she had wasted her money and that she had to take out the run and could not put up the fence.
- b) Due to Minor's Autism she can barely leave him unsupervised to take a shower because he will do things such as take down all of the pots and pans and start banging on them. Minor also has a strong aversion to falling snow or rain and because of this it is hard to get him to go out in bad weather.
- c) Although the yard behind her apartment is a common area, it is understood among the tenants that each apartment has a space by their back door that they consider their personal yard. People put out grills and kiddie pools, etc. Putting up a fence would not take space away from others. It is also preferable to just a dog run because other children have been coming over and trying to play with the dog every time it is outside. They distract the dog when her son is trying to interact with it. She does not leave the dog unsupervised for more than 10 – 15 minutes at a time and the dog rarely barks. It only escaped once and the maintenance employee caught it and kept it for her.
- d) Her son's dog has never attacked any other dog or chased after residents. She has no idea where this information is coming from. She received only one notice about a neighbor complaining about her dog barking when she first got it and one complaint about not picking up after the dog, which she did after receiving that warning.
- e) She refuses to sign the new pet Amendment because she does not agree to the provision that a third party must sign a statement that they are willing to take care of the dog if the owner is unable to (see undisputed facts). She believes this

leaves it open for management to get rid of an animal whenever they feel like it and for whatever reason. This policy is too restrictive. She also does not agree with the fact that the pet Amendment states that no other pets may be allowed on the property. This should not apply to service animals.

- f) Respondent alleges that the third party signature provision has not been enforced against tenants with service animals, but one of the reasons listed on her Notice To Quit was for her refusal to sign the Pet / Assistive Animal Amendment. This is an enforcement of all provisions in the Amendment, including the requirement of a third party signature.

4) Respondents provided the following:

- a) In October of 2005 Complainant requested a reasonable accommodation to have a service dog for her disabled son. The request was granted. No request was made for a fenced-in area or dog run at the time. She put up the dog run in March of 2008 without requesting it as a reasonable modification or stating that it was necessary for the dog. She informed Respondent that she did not want to take the dog out when it was cold or raining. Respondent told her to remove the dog run since it could injure other tenants or guests if left unsupervised and create liability concerns for the company. Complainant failed to demonstrate how the dog run is necessary for her son to obtain equal benefits of his housing.
- b) Tenants would sometimes complain that Complainant failed to clean up after her dog and that she would have visitors with dogs. They also complained that the dog barked frequently and disturbed them. She would also allow the dog to run loose and one time the maintenance personnel had to keep the dog in the office because it was loose. On at least one other occasion the dog was loose and chased two other residents and attacked another dog.
- c) Due to the tenant complaints about Complainant's dog, she received notices warning her that if she did not keep her dog under control and pick up after it that her lease would be terminated.
- d) In late 2008 or early 2009 they came out with a uniform pet policy which was to be effective February 1, 2009. The provision regarding third party responsibility for pets did not specifically exempt service animals, but it has not been applied or enforced against tenants with service animals. Complainant refused to sign the policy.

5) Minor's Pediatrician provided the following:

- a) Minor was born without eyes and numerous medical conditions including Septo-Optic Dysplasia, Holoprosencephaly which are rare genetic conditions. He was born with an anatomically abnormal brain and a lot of his medical disorders are related and his condition is very complicated. He does not fit neatly into any of

his diagnoses. He also has ADHD and seizure disorder. His last seizure was last year. Minor has been going to him for the past 2 years. Minor was diagnosed with Autism when he was younger, but that has not been on his "problem list" for at least the past 3 years.

- b) Leaving Minor alone and unsupervised could be problematic. He would not be comfortable doing this. An 11-year-old with the extent of his medical conditions could get himself into trouble and hurt himself. He could also have a seizure. Even 10 – 15 minutes alone could be problematic in that he could hurt himself in that amount of time. He would not trust him to be alone.
- c) Regarding the difficulty of getting Minor to do something he does not want to do (such as go outside), he cannot comment on this. He does not know him in that capacity. (When presented with the idea of the dog run, Dr. P asked, "can't she take him outside with her?" He also said that the dog run didn't sound like a "medical thing.")

#### **V. Analysis:**

- 1) The Maine Human Rights Act requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S.A. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The Maine Human Rights Act makes it unlawful for any owner or managing agent to "refuse to permit, at the expense of the person with physical disability, reasonable modifications of existing premises occupied or to be occupied by that person if the modifications may be necessary to give that person full enjoyment of the premises." 5 M.R.S.A. § 4582-A(1).
- 3) To establish a claim of housing discrimination based on an alleged refusal to make reasonable modifications, Complainant must show that he has a protected disability and that Respondent refused a modification of the premises that was both reasonable and necessary to afford him full enjoyment thereof. *See Rodriguez v. Montalvo*, 337 F.Supp.2d 212, 216 (D.Mass. 2004).
- 4) Complainant could not establish a claim of housing discrimination here because she could not show that a fenced-in dog run was necessary to afford her son Minor the full enjoyment of the housing premises. Minor's Pediatrician was interviewed and although agreed that leaving him alone could be problematic, when asked about the dog fence he expressed that it did not seem like "a medical thing" and stated that he could not speak to the fact that Complainant could not bring Minor out with her when she took the dog out to go to the bathroom because it was hard to get him to comply with her. Dr. P also stated that Autism had not been on his "problem list" for the last few years, and Complainant stated that it was his Autism that made it difficult to get him to comply with her such as going outside in bad weather. Given this information,

it was not established that the dog run was a necessity for Minor to fully enjoy the housing premises.

- 5) The Maine Human Rights Act also makes it unlawful for any owner or managing agent to discriminate against an individual on the basis of disability, "in the price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations." 5 M.R.S.A. § 4582
- 6) With respect to service animals specifically, the Maine Human Rights Act also makes it unlawful for any owner or managing agent to, "otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the housing accommodation unless it is shown by defense that the service animal poses a direct threat to the health or safety of others or the use of the service animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others." 5 M.R.S.A. § 4582-A(3).
- 7) Here, Complainant has shown that Minor was not offered the same terms and conditions of the housing unit as other tenants in that restrictions were placed upon him that other non-disabled tenants were not subjected to, specifically the requirement of the third party signature for responsibility of his service animal. While other pet owners are subject to this, service animals are not pets and similarly to a pet security deposit, should not be subjected to such conditions. The service animal is necessary for Minor's disabilities, and placing a condition of a third party to care for it is subjecting him to a condition that is not placed on non-disabled tenants. Respondent has the right to take action if a service animal causes damage to the property or poses a direct threat to others, but Respondent does not have the right to act preemptively by placing the additional restriction on a service animal.
- 8) Respondent did not offer a legitimate, nondiscriminatory reason for this provision, but instead stated that it has not been applied or enforced on any tenants with service animals. Complainant, however, was served with an eviction notice in part due to her refusal to sign the Amendment which contained this restrictive provision she disagreed with. This is a clear enforcement of the provision on the part of the Respondent.<sup>1</sup>
- 9) Complainant also alleges that the Amendment provision of no outside pets should not apply to service animals (see undisputed facts). The amendment clearly states "pets" and not service animals, albeit the provision is not in bold to indicate that assistive animals are exempt from this rule. Service animals are allowed by law anywhere with their owners, so this provision should clarify that this does not apply to service animals. This does not, however, deny Minor the use of his service animal.

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<sup>1</sup> While Complainant alleged that the Amendment denied her son the reasonable accommodation of his service animal because of the restrictions discussed above, it is being analyzed under discrimination in terms and conditions instead, given that the third party provision does not deny her son the use of his service animal but places unlawful restrictions on such use.

**VI. Recommendation:**

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

- 1) There are **No Reasonable Grounds** to believe that Respondent 1, Respondent 2 or Respondent discriminated against Complainant and her son on the basis of his disability by refusing her request for a reasonable modification of a fenced-in dog run in her yard or by prohibiting visiting pets.
- 2) This portion of the case should be dismissed in accordance with 5 M.R.S.A. § 4612(2).
- 3) There are **Reasonable Grounds** to believe Respondent discriminated against Complainant and her son on the basis of his disability by imposing and enforcing a lease amendment requiring a third party to accept responsibility for a service animal in the event of the tenant's incapacity.
- 4) Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).

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Patricia E. Ryan, Executive Director

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Angela Tizón, Investigator